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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-225

JULIA ANN SALAS,

Petitioner,

vs.

MIGUEL MARTINEZ CORTEZ,

Respondent.

DAVID M., a Minor, by FRANK J. ADAMICH, his Guardian Ad Litem, and COUNTY OF VENTURA,

Petitioner,

vs.

DAVID DURAN CASTELLANOS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

RESPONDENTS' BRIEF IN OPPOSITION

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INTRODUCTION

The respondents MIGUEL MARTINEZ CORTEZ and DAVID DURAN CASTELLANOS respectfully request that this Court deny the petition for writ of certiorari, seeking review of the California Supreme Court's opinion in

this case.

Respondents agree with petitioners' preliminary presentations regarding the case under petitioners' topical headings as follows: Opinion Below; Statutory Provisions; and Statement of the Case.

Respondents do not agree with petitioners' preliminary presentations under the following topical headings: Jurisdiction; Questions Presented; and Constitutional Provisions Involved.

QUESTION PRESENTED

Does the United States Supreme Court have jurisdiction to review a decision of the California Supreme Court where the decision rests upon an independent and adequate state ground under the California Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

Respondents incorporate herein by reference petitioners' quotation of the United States Constitution, Amendment XIV.

California Constitution, Article I, Section 7, subdivision (a):

"A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws."

REASONS WHY A WRIT OF CERTIORARI SHOULD BE DENIED

The Decision of the California Supreme Court Rests Upon an Adequate, Independent State Ground, and Therefore Is Beyond the Reviewing Power of the United States Supreme Court

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Petitioners attempt to invoke 28 U.S.C. section 1257(3) as a basis for this Court's jurisdiction. 28 U.S.C. §1257(3) states in pertinent part as follows:

> "Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Petitioners' claim appears to be that the California Supreme Court, in granting respondents a right to Court appointed counsel in certain kinds of civil paternity actions, has set up a right under the United States Constitution.

In rendering its opinion the California Supreme Court cited the Due Process Clause of the United States Constitution as well as the Due Process Clause of the California Constitution. It also cited numerous cases handed down by this esteemed Court as well as cases handed down by California courts under the California Due Process Clause. It does not follow that a state supreme court sets up a right under the United States Constitution merely because it refers to federal constitutional provisions and cites cases decided by the United States Supreme Court. To hold otherwise would illogically deprive state courts of the wisdom of this Court in reaching decisions under the constitutions of their home states. Litigants would also be discouraged from citing opinions of this Court, fearing that a reference to a United States Supreme Court decision would jeopardize an argument that a certain right is required under a state constitution.

To avoid such unseemly results, it is well established that if a decision of a state supreme court is sufficiently based upon independent state constitutional grounds, that decision is beyond the reviewing power of the United States Supreme Court. (Department of Mental Hygiene of California v. Kirchner (1965) 380 U.S. 194, 200;

Jankovich v. Indiana Toll Road Commission (1965) 379 U.S. 487, 489; Fox Film Corporation v. Muller (1935) 296 U.S. 207, 210; Murdock v. City of Memphis (1875) 20 Wall. 590, 620.)

The key question is whether the state ground is independent and adequate. In Jankovich, supra, this Court reviewed certain jurisdictional points and discussed its approach in resolving them. One point, akin to the present case and discussed at length in Jankovich, involved decisions of state courts in which similar provisions of state and federal constitutions are analyzed together. This Court concluded that in such cases the state ground is not independent and adequate only if the lower court opinion as a whole leaves the impression that the lower court probably felt constrained to rule as it did because of the Fourteenth Amendment of the United States Constitution or some other federal law. (Jankovich v. Indiana Toll Road Commission, supra, 380 U.S. 480, 492.)

In Department of Mental Hygiene of California v. Kirchner (1965) 380 U.S. 194, 201, the United States Supreme Court could not decide whether the California Supreme Court's decision was based upon an independent state ground. Rather than deciding the federal constitutional issues, this Court remanded the case to the California Supreme Court for further proceedings for the California court to decide whether its judgment rested on adequate, independent, non federal grounds. This at best is all that petitioners in the present case would be entitled to.

A close reading of Kirchner reveals that it is both consistent with Jankovich and with one of the "not independent and adequate" tests set forth therein, namely, where the state court decision is based on the Fourteenth Amendment. In Kirchner this Court could not conclude that the California Supreme Court decision was based upon the Fourteenth Amendment, and hence the resulting remand. It is important to note that it was not simply the intertwining of federal and state constitutional analysis that created the problem in Kirchner. Rather, it was certain language in the California Supreme Court's decision that created an ambiguity that might have led one to conclude that, indeed, the California court based its decision on the Fourteenth Amendment. As this Court pointed out in Kirchner:

> "The [California Supreme] Court first discussed Department of Mental Hygiene v. Hawley, 59 Cal. 2d 247, 28 Cal.Rptr. 718, 379 P.2d 22, a case decided under the Fourteenth Amendment, and then stated 'This holding is dispositive of the issue before us.' 60 Cal.2d 720, 36 Cal.Rptr. 488, 388 P.2d 722. (Department of Mental Hygiene of California v. Kirchner (1965) 380 U.S. 194, 198, 199; emphasis added)

The ambiguity was created when the California Supreme Court, despite the express statement that the Fourteenth Amendment was dispositive of the issue, appeared also to rely upon similar

California constitutional provisions.

In the present case, unlike Kirchner, there is no statement that the Fourteenth Amendment or cases cited thereunder were dispositive of the issue involved. Nor does it appear that the California Supreme Court felt constrained to rule as it did solely because of Fourteenth Amendment requirements. Indeed, the California Supreme Court makes it clear in footnote 2 of its opinion that California constitutional provisions are often more protective of individual rights than are federal constitutional provisions. (Salas v. Cortez (1979) 24 Cal. 3d 22, 27, n. 2; Petition for Writ of Cert., Appendix, p. 24; see also, Falk, The State Constitution: A More than Adequate Ground, 61 Calif. Law Rev. 273 (1973).) At footnote 2 the California Supreme Court points out, in refuting the dissent, that the dissenting opinion is based upon the constraints of federal due process, whereas the majority opinion is not.

It is therefore, clear that the California Supreme Court in the case here freely and independently based its opinion on Article I, Section 7, subdivision (a) of the California Constitution as well as the Fourteenth Amendment to the United States Constitution.

Petitioners very craftily attempt to dispose of the jurisdictional issue by burying it in the cryptic language of footnote 1, page 11 of their petition. It is obvious that the brief treatment accorded the issue therein fails to address any of the critical jurisdictional shortcomings of the

petition and is therefore not worthy of further comment.

Whether or not this Court were to agree or to disagree with the California Supreme Court's conclusions regarding the Fourteenth Amendment, the California Supreme Court's decision also rests solidly upon the California Constitution and, as such, constitutes an independent and adequate state ground beyond the reviewing power of the United States Supreme Court.

CONCLUSION

For the foregoing reasons, respondents submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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